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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,008	02/27/2002	Charles Crosby	PC-1204	6689

7590

08/26/2005

LAW OFFICES OF BRIAN S. STEINBERGER, P.A.
101 Brevard Avenue
Cocoa, FL 32922

EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant No.

10/084,008

Applicant(s)

CROSBY ET AL.

Examiner

david shay

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on June 9, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-10,13-23 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-10,13-23 and 25-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 7, 10, 13, 16, 28, and 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by TENS CAM.

Claims 1, 2, 5-10, 13-16, 26, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in view of the Tens-Cam device. Murphy teaches a device such as claimed except the particular frequencies and the mention of a specific power supply as well as a stand (see element 29). The Tens-Cam teaches the particular frequencies, power supplies, and treatment times and distances claimed. It would have been obvious to use the Tens Cam as the radiation source or in combination with the radiation source of Murphy or a flesh lamp source, since Murphy teaches that any suitable source may be used, thus producing a device such as claimed.

Claims 17-25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy in combination with Tens Cam. The teachings of Murphy and Tens Cam and the motivations for combination thereof are essentially those already set forth above. Thus it would have been obvious to the artisan of ordinary skill to combine these old and well known teachings to produce a method such as claimed.

It is noted that applicant discusses the sale and use of Tens Cam devices in the paragraph bridging pages 1 and 2 of the instant disclosure. It is further noted that the publication

concerning the Tens Cam filed with the Information Disclosure Statement filed February 27, 2003 is marked "REVISION" 9/15/01". The examiner REQUIRES applicant to furnish the earliest date that the Tens Cam was offered for sale; the earliest date of the use of Tens Cam; and copies of any and all publications that REVISION 9/15/01 is a revision of or any other publication describing the Tens Cam and their publication dates.

Applicant's arguments with respect to claims 1, 2, 5-10, 13-23, and 25-30 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak, can be reached on Monday, Tuesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330